SUPREME COURT, U. S.

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No. 173

In the Supreme Court of the United States

OCTOBER TERM, 1968

RICHARD E. GORMAN, PETITIONER

v.

UNITED STATES OF AMERICA

MEMORANDUM IN RESPONSE TO PETITION FOR REHEARING

ERWIN N. GRISWOLD,
Solicitor General,

JOHNNIE M. WALTERS,
Assistant Attorney General,

JOSEPH M. HOWARD,
JOHN M. BRANT,
Attorneys,
Department of Justice,
Washington, D. C. 20530.

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This memorandum is submitted in response to the order of this Court dated March 24, 1969 requesting an answer to the petition for rehearing.

The petition for certiorari was denied on October 14, 1968. On October 23, 1968, we advised the Court that we had discovered that petitioner had been overheard during the course of an electronic surveillance. We stated that petitioner himself had never been the target of such a surveillance; that on one occasion he had participated in a conversation picked up during a surveillance directed at someone else; that the conversation was totally unrelated to the prosecution of petitioner; and that we proposed to make a full disclosure of the overheard conversation to the district court. Disclosure of the log of this conversation was

then made to petitioner in the district court at hearings conducted by the trial judge on October 24, October 29, and November 1, 1968.[1]

This Court has requested a specific response to the allegation of the petition for rehearing (p. 4) to the effect that petitioner

> appeared before the District Court where that Court summarily, without taking evidence or hearing argument, and apparently on the representation of non-materiality by the government ruled the purported log not material to the petitioner's case.

Petitioner's statement does not accurately reflect what occurred in the district court. The government informed the district court that there was only one log which recorded a conversation to which petitioner had been a party (Tr. 3, 25).[2] A copy of that log was turned over to petitioner's counsel in open court on October 29, 1968 (Tr. 11-14). And, at the hearing on November 1, 1968, counsel conceded that the log contained nothing relevant to the offenses involved in this case[3] (Tr. 25).

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[1] The transcript of these three hearings has been lodged with the Clerk of this Court and will be referred to as "Tr.".

[2] Our investigation has indicated that petitioner himself was never the target of an electronic surveillance; that no such surveillance was ever conducted on petitioner's premises; and that the two attorneys who represented him at the trial have not been the subjects of electronic surveillances, nor have any of their conversations been monitored by an electronic device, nor have they been mentioned or discussed by others whose conversations were being monitored.

[3] The district court had already come to the same conclusion (Tr. 9, 12).

The district court was informed that the government had logs of additional conversations in which petitioner was mentioned although he was not a party to the conversation (Tr. 25). Petitioner's counsel did not ask for copies of these logs, but he did ask for production of F.B.I. index cards relative to the surveillance in which petitioner had been overheard (Tr. 23-24). The government objected on the ground that petitioner had already been given the log of the only conversation to which he had been a party, and the court refused to order further production (Tr. 23-25).

Petitioner had no standing to complain of electronic surveillances which were not conducted on his premises and which did not record conversations to which he was a party. *Alderman* v. *United States*, No. 133, Oct. Term 1967, decided March 10, 1969. Having received the log of the only conversation which he had standing to suppress and having conceded that the conversation was not relevant to the prosecution, petitioner had no right to explore the files of the Department of Justice in order to question the veracity of representations by the government. *Taglianetti* v. *United States*, No. 446, this Term, decided March 24, 1969.

The petition for a rehearing should be denied.

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General,

JOHNNIE M. WALTERS,
Assistant Attorney General,

JOSEPH M. HOWARD,
JOHN M. BRANT,
Attorneys.

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